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IN THE

Supreme Court of the United States

FEBRUARY TERM, 1930.

No. 282.

UNITED STATES OF AMERICA, *Appellant*,

vs.

D. D. ADAMS, *Appellee*.

BRIEF FOR ADAMS.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF FOR ADAMS.

The issue raised on this appeal involves the same question which is presented in United States of America v. Adams, No. 281, now pending. That is, whether the recording of the same item in separate books or records of the bank, if this entry be a false entry, will constitute one offense or a separate offense for each book or record in which the transaction may be recorded. In this case Adams was indicted, tried and acquitted on an indictment alleging that he had caused false entries to be made in the books of the Union Bank & Trust Company of Batesville, Arkansas, an associ-

ate member bank, touching three items aggregating $47,125.25. These constituted three separate counts in an indictment on which Adams was acquitted on a trial on the former indictment.

These items which were items of credit aggregated, as said before, $47,125.25. The inclusion of this aggregate item in a "report of conditions" of said bank to the Federal Reserve bank of St. Louis, Missouri, was made the basis of a charge alleging that that inclusion constituted a false entry made in said report, to which indictment a plea of former jeopardy and former acquittal was urged and sustained. This differs from the case briefed under No. 281 only in that the items were entered in the books of said bank as of date August 23, 1926, and the "report of conditions" was made December 31st of that year. The items are the same and the good or bad faith of Adams in causing the entry to be made in the books of the bank as of date August 23d, 1926, for which he was indicted and acquitted, and the "report of conditions" was the same.

However, learned counsel for the Government stressed this difference in date as a reason for the reversal of this cause. In the Government's brief, page 5, is this language:

> "It requires no argument to demonstrate that measured by the test stated by this court in the cases set forth in the Government's brief in No. 281, United States v. Adams, filed simultaneously herewith, to which reference is made, the evidence required to establish the offenses described in the counts of the indictment under which defendant was acquitted, would by no means establish the offense described in Count II of the pending indictment. Under the pending indictment the question is the truth or falsity of the entry in the re-

port showing that on December 31, 1926, certain banks owed defendants' bank a certain sum of money. Manifestly evidence tending to establish a falsity of entries in the Bank's books on earlier different days showing remittances to outside banks, would not establish the falsity of the entry described in the pending indictment covering the amount asserted to be due from outside banks on December 31, 1926, a date later than those of the alleged remittances mentioned in the counts under which an acquittal was had."

This argument might present a reason, but it would be a speculative reason—in that it might be contended that conditions have changed and, therefore, the intent that accompanied Adams' act in causing the entries to be made in the bank and that causing the report to be made might be a different intent and be proved by different circumstances.

The fallacy of this is demonstrated, however, by the language of the plea of former jeopardy and former acquittal which recites among other things the following:

"* * * that before the jury would be authorized to convict the defendant in this case of making false entries it would first be necessary for it to consider the *same evidence* submitted to the jury in the former trial and to draw different and opposite conclusions from said evidence to that reached by the jury in the former trial.

And defendant here tenders proof of all the allegations and facts set up and alleged herein, and prays that upon a hearing of said evidence that the indictment herein be quashed and that defendant be discharged." (R. 6-7)

If this contention of the plea of former jeopardy and former acquittal be good, the Court was correct in sustaining it.

The judgment of the Court is conclusive that such is the fact. On pages fifteen and sixteen of the record, the judgment recites the following:

> "Now, on this day, June 4, 1929, this cause comes on for consideration on the regular call of the docket and the United States appears by Charles F. Cole, United States attorney for the Eastern District of Arkansas, and the Defendant, D. D. Adams, appears in person and by his attorneys, T. H. Caraway and Coleman & Reeder, and thereupon is presented to the court the plea of former jeopardy and former acquittal heretofore filed herein by the defendant, D. D. Adams, to the second count of the indictment against him herein, and the same is submitted to the court upon the indictment herein and said plea of former jeopardy and former acquittal, a copy of the indictment in the case of the United States vs. D. D. Adams, No. 1116, formerly pending in the District Court of the United States, Northern Division of the Eastern District of Arkansas, and the judgment of acquittal in said case, entered upon a verdict of not guilty returned by a jury therein, no other evidence being introduced, the argument of counsel in support of said plea, as well as the argument of the district attorney in opposition thereto, and the court being well and sufficiently advised as to the law arising upon said plea doth find that under the provisions of section 5209 of the Revised Statutes of the United States, as amended, and as now construed by this Court, said plea of former jeopardy and former acquittal should be sustained."

Learned counsel for the Government seems also to have overlooked the Memorandum on sustain-

ing the plea of former jeopardy and former acquittal as it appears on page sixteen of the record which recites:

> "The plea of the defendant, Drury D. Adams, of former jeopardy and former acquittal coming on for hearing, the court finds that the three items constituting the difference between the deposits actually in the three banks are the three items upon which three counts of a former indictment were based, and upon which the defendant Drury D. Adams was tried and acquitted, and that the only difference between this charge and the charges in the former indictment is that entries were made of the same items in different books or reports, the charge in this indictment and the charges in the former indictment growing out of the same acts of the defendant, Drury D. Adams, and the defendant's plea of former jeopardy and former acquittal is sustained."

It will be observed that the Court finds:

> "* * * THE ONLY DIFFERENCE BETWEEN THIS CHARGE AND THE CHARGES IN THE FORMER INDICTMENT IS THAT THE ENTRIES WERE MADE OF THE SAME ITEMS IN DIFFERENT BOOKS OR REPORTS, THE CHARGE IN THIS INDICTMENT AND THE CHARGES IN THE FORMER INDICTMENT GROWING OUT OF THE *SAME ACTS* OF THE DEFENDANT, DRURY D. ADAMS, AND THE DEFENDANT'S PLEA OF FORMER JEOPARDY AND FORMER ACQUITTAL IS SUSTAINED." (R. 16)

To this finding of fact no exceptions were entered or saved and the correctness of the finding is not before this Court. It necessarily follows, therefore, that the

Court was correct in sustaining the plea because the intent with which Adams acted in causing the entries to be made in each case was the essence of the charge. If he had no intent either to injure, defraud or deceive in causing said entries to be made, he was not guilty of any offense. The Court found that the intent of Adams at the time of causing to be made entries of which he was formerly tried and acquitted and that which is the basis of the indictment now pending before the Court was the same intent.

In the language of the Court "* * * **the only difference between this charge and the charges in the former indictment is that entries were made of the same items in different books or reports** * * *".

As before said, to that finding and announcement of fact there were no exceptions saved and the correctness of that finding is not here for review.

The only question before this Court is whether the recording of an item alleged to have been a false entry in different books or reports of the same bank setting out exactly the same transaction constitutes one offense or as many offenses as this transaction is recorded in the different books or reports of the bank.

That question is briefed in No. 281, The U. S. of America v. Adams, which brief is herein referred to and respectfully asked to be considered as the brief in this cause submitted.

Respectfully submitted,

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Attorney for Adams.

Coleman and Reeder,
Associated Attorneys.